

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 965 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURDHIRCHANDRA B. JOSHI

Versus

M/S PANALAL HIMATLAL GANDHI

Appearance:

MR PG DESAI for appellant
MR BS PATEL for Respondent No.1 & 2
NOTICE SERVED for Respondent No. 3 & 4
PUBLIC PROSECUTOR for Respondent No. 5

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/09/98

ORAL JUDGEMENT

Original complainant, after obtaining leave of this Court as required under the Code of Criminal Procedure, has preferred this appeal against the respondents No.1, 2 and 3 (hereinafter referred to as the Vendors) and respondent No.4 -original accused No.4 (hereinafter referred to as the manufacturer) against the

order of acquittal recorded on 25.8.1989 by Judicial Magistrate First Class, Vadodara in Criminal Case No. 2811/82 wherein the accused were tried for offences punishable under sections 2(A), 7(1) and 16(1)(a)(i) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act).

2. From the charge Exh. 107 it appears that the accused No.1, a partnership firm viz: Pannalal Himatlal Gandhi, whose partners Panalal Himatlal Gandhi and Harivadan Panalal Gandhi, accused No. 2 and 3 respectively, were dealing as grocery merchants. Accused No.4 Sushila, owner of Saras Masala Gruh, was the manufacturer who supplied curry power (Saras brand Masala). The Food inspector on 20.2.1982, in the presence of a Panch, collected the sample. After following the procedure laid down under the Act and Rules, forwarded one of the samples to the Public Analyst for report and on analysis, the sample was found to be adulterated. Hence the complainant launched prosecution. On the basis of this, charge Exh.107 came to be framed against the accused, specifically pointing out that accused No.2 and 3 were the partners of accused No.1 and accused No.4 was the proprietor of Saras Masala Gruh who had supplied the adulterated food article.

3. Evidence clearly reveals that sealed packets were with the vendor, and out of the sealed packets, samples were collected. The Food Inspector has specifically stated that the samples were sealed and each sealed packets contained curry powder weighing 100 gms. From the panchnama, it appears that on the packet, name of Saras Masala Gruh Udyog was printed. In the label, it was specifically mentioned that the contents are according to the standard prescribed under the provisions contained in the Act and Rules. In view of this specific label, the accused No.4 was joined as an accused at the initial stage being manufacturer of the article of food in question. Thus, it was the case of the prosecution that vendors purchased the article of food from accused No.4 and that the sample revealed that the article of food was adulterated.

4. Mr. Patel, learned advocate appearing for the accused No. 1,2 and 3 submitted that respondent No.2 has expired on 5.8.1993 for which he has placed before the Court certificate issued by the competent authority. He has also produced death certificate of Sushilaben, proprietor of Saras Masala Gruh, accused No.4. Copy of the death certificates are ordered to be taken on record.

5. Learned Additional Public Prosecutor could not point out that warranty in the instant case has not been proved, and if that be so, accused No.1,2 and 3 cannot be held guilty. Moreover, appeal abates so far as accused No.4 is concerned. Appeal also abates so far as accused No.2 is concerned. In the circumstances, the following order is passed:

6. Order of acquittal insofar as respondent-accused No. 1 and 3 are concerned, stands confirmed. Appeal abates so far as respondents-accused No.2 and 4 are concerned. This appeal stands dismissed accordingly.
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